

## **IC 36-12-10**

### **Chapter 10. Leasing of Library Property**

## **IC 36-12-10-1**

### **Application of chapter**

Sec. 1. This chapter applies to the following public corporations:

- (1) A municipal corporation that operates and maintains library facilities.
- (2) Any other public corporation, established by statute, that operates and maintains library facilities.

*As added by P.L.1-2005, SEC.49.*

## **IC 36-12-10-2**

### **Power to lease library buildings; conditions; joint lease contracts**

Sec. 2. (a) A public corporation may lease a library building or buildings for the use of the public corporation or of any joint or consolidated public corporation of which the public corporation is a part or to which the public corporation contributes, under the following conditions:

- (1) A lease may not be entered into for a period of more than forty (40) years.
- (2) Before a lease is entered into, there must first be filed with the governing authority of the public corporation a petition signed by fifty (50) or more resident taxpayers of the public corporation.
- (3) After investigation, the governing authority must determine that a need exists for the library building or buildings.
- (4) The governing authority must determine that the public corporation cannot provide the necessary funds to pay the cost or the public corporation's proportionate share of the cost of the library building or buildings required to meet the present needs.

(b) If two (2) or more public corporations propose to enter into a lease jointly, joint meetings of the governing authority of the corporations may be held. Action taken is binding on a public corporation only if the action is approved by the public corporation's governing authority. A lease executed by two (2) or more public corporations as joint lessees must set out the amount of the total lease rental agreed upon to be paid by each. A lessee is entitled to occupancy only if the total rental is paid as stipulated in the lease. All rights of joint lessees under the lease must be proportionate to the amount of lease rental paid by each.

*As added by P.L.1-2005, SEC.49.*

## **IC 36-12-10-3**

### **Authorized purposes of leases; limitations on profit; disposition of excess funds**

Sec. 3. (a) A public corporation may enter into a lease under this chapter only with a nonprofit corporation organized under Indiana law for the sole purpose of:

- (1) acquiring real property;

- (2) building, improving, constructing, or renovating a suitable library building or buildings, including the necessary equipment and appurtenances;
- (3) leasing the library facilities to the public corporation or corporations; and
- (4) collecting the rentals and applying the proceeds from the rentals in the manner provided in this chapter.

(b) The lessor corporation shall act entirely without profit to the corporation and the corporation's officers, directors, and members but is entitled to the return of capital actually invested, which includes:

- (1) incorporation and organization expenses;
- (2) financing costs;
- (3) carrying charges;
- (4) legal, contractors', and architects' fees; and
- (5) any other capital cost.

The lessor corporation is also entitled to sums sufficient to pay interest on outstanding securities or loans, and the cost of maintaining the corporation's existence and keeping the corporation's property free of encumbrance.

(c) Upon receipt of any amount of lease rental by the lessor corporation above the amount necessary to meet incidental corporate expenses and to pay interest on corporate securities or loans, the excess funds shall be applied to the redemption and cancellation of the corporation's outstanding securities or loans as soon as this may be done.

*As added by P.L.1-2005, SEC.49.*

#### **IC 36-12-10-4**

##### **Provisions of lease**

Sec. 4. (a) All contracts of lease must provide that:

- (1) the public corporation or corporations have an option to renew the lease for a further term, with like conditions; or
- (2) the property covered by the lease may be purchased after six (6) years from the execution of the lease and before the expiration of the term of the lease, on the date or dates in each year that are fixed, at a price equal to the amount required to enable the lessor corporation owning the site to:
  - (A) liquidate by paying all indebtedness, with accrued and unpaid interest; and
  - (B) recover the expenses and charges of liquidation.

(b) However, the purchase price prescribed by subsection (a)(2) may not exceed the capital actually invested in the property by the lessor corporation represented by outstanding securities or indebtedness plus the cost of transferring the property and liquidating the lessor corporation.

(c) A lease may not provide that any public corporation is under an obligation to purchase the leased library facilities or under an obligation in respect to the creditors, members, or other security holders of the lessor corporation.

*As added by P.L.1-2005, SEC.49.*

#### **IC 36-12-10-5**

##### **Submission of plans and specifications to certain state agencies; approval**

Sec. 5. (a) The lessor corporation proposing to provide a library building or buildings, including necessary equipment and appurtenances, shall submit to the lessee or lessees, before the execution of a lease, preliminary plans, specifications, and estimates for the building or buildings.

(b) The final plans and specifications shall be submitted to the state department of health, state fire marshal, and any other agencies that are designated by law to pass on plans and specifications for library buildings. The final plans and specifications must be approved by these agencies and the lessee or lessees in writing before the construction of the building or buildings.

*As added by P.L.1-2005, SEC.49.*

#### **IC 36-12-10-6**

##### **Authorized provisions of lease; payment of taxes, insurance, and repairs**

Sec. 6. The lease may provide that, as a part of the lease rental for the library building or buildings, the lessee or lessees shall agree to:

- (1) pay all taxes and assessments levied against or on account of the leased property;
- (2) maintain insurance on the property for the benefit of the lessor corporation; and
- (3) assume all responsibilities for repair and alterations with regard to the building or buildings during the term of the lease.

*As added by P.L.1-2005, SEC.49.*

#### **IC 36-12-10-7**

##### **Leases in anticipation of completion of building; bond**

Sec. 7. (a) The public corporation or corporations may, in anticipation of the acquisition of real property and any necessary construction of a library building or buildings, including the necessary equipment and appurtenances, enter into a lease with the lessor corporation before actual acquisition of real property and any construction of the building or buildings. However, the lease may not provide for the payment of lease rental by the lessee or lessees until the building or buildings are complete and ready for occupancy, at which time the stipulated lease rental payments may begin.

(b) The contractor must be required under the lease to furnish to the lessor corporation a bond satisfactory to the corporation conditioned upon the final completion of the building or buildings within a period that may be provided in the contract.

*As added by P.L.1-2005, SEC.49.*

#### **IC 36-12-10-8**

##### **Notice and hearing on terms and conditions of proposed lease**

Sec. 8. (a) When the lessor corporation and the public corporation or corporations have agreed upon the terms and conditions of a lease proposed to be entered into under this chapter and before the final execution of the lease, notice of a hearing shall be given by publication to all interested persons. The hearing shall be held before the governing authority, on a day not earlier than ten (10) days after the publication of the notice.

(b) The notice of the hearing shall be published one (1) time in a newspaper of general circulation printed in the English language in the district of the public corporation or in each public corporation district if the proposed lease is a joint lease. If a newspaper is not published in the district, the notice shall be published in any newspaper of general circulation published in the county. The notice must name the date, place, and time of the hearing and set forth a brief summary of the principal terms of the lease agreed upon, including:

- (1) the location;
- (2) the name of the proposed lessor corporation and character of the property to be leased;
- (3) the rental to be paid; and
- (4) the number of years the contract is to be in effect.

The proposed lease, drawings, plans, specifications, and estimates for the library building or buildings must be available for inspection by the public during the ten (10) day period under subsection (a) and at the meeting. All interested persons are entitled to be heard at the hearing regarding the necessity for the execution of the lease, and whether the rental provided for in the lease to be paid to the lessor corporation is a fair and reasonable rental for the proposed building or buildings. The hearing may be adjourned to a later date or dates, and following the hearing, the governing authority may either authorize the execution of the lease as originally agreed upon or may make modifications that have been agreed upon by the lessor corporation. The lease rentals as set out in the published notice may not be increased. The cost of the publication of the notice shall be paid by the lessor corporation.

*As added by P.L.1-2005, SEC.49.*

### **IC 36-12-10-9**

#### **Notice of lease signing; appeal to department of local government finance; limitation on actions to contest validity of lease**

Sec. 9. (a) If the execution of the lease as originally agreed upon, or as modified by agreement, is authorized by the library board, the library board shall give notice of the signing of the lease by publication one (1) time in a newspaper of general circulation printed in the English language in the district of the public corporation or in each public corporation district if the proposed lease is a joint lease. If a newspaper is not published in the district, the notice shall be published in any newspaper of general circulation published in the county.

(b) Fifty (50) or more taxpayers in the public corporation or

corporations who will be affected by the proposed lease and who are of the opinion that the execution of the lease is not necessary or that the proposed rental is not a fair and reasonable rental may file a petition in the office of the county auditor of the county in which the public corporation or corporations are located. The petition must be filed not later than thirty (30) days after the publication of notice of the execution of the lease and must set forth objections and facts showing that the execution of the lease is unnecessary or unwise or that the lease rental is not fair and reasonable, as the case may be.

(c) Upon the filing of a petition, the county auditor shall immediately certify to the department of local government finance a copy of the petition, together with other data that may be necessary to present the questions involved. Upon receipt of the certified petition and information, the department of local government finance shall fix a time and place for a hearing of the matter not less than five (5) or more than thirty (30) days after the department's receipt of the petition and information. The hearing shall be held in the public corporation or corporations or in the county where the public corporations are located.

(d) Notice of the hearing shall be given by the department of local government finance to the members of the library board and to the first ten (10) taxpayer petitioners on the petition by a letter signed by the department of local government finance. The postage of the notice shall be prepaid, and the notice shall be addressed to the persons at their usual place of residence and mailed at least five (5) days before the date of the hearing. The decision of the department of local government finance on the appeal regarding the necessity for the execution of the lease and whether the rental is fair and reasonable is final. A lease may be amended by the parties by following the procedure under this chapter.

(e) An action to contest the validity of the lease or an amendment to the lease or to enjoin the performance of any of the terms and conditions of the lease must be brought not later than thirty (30) days after publication of notice of the execution of the lease or an amendment to the lease by the library board of the public corporation or corporations. If an appeal has been taken to the department of local government finance, action must be brought not later than thirty (30) days after the decision of the department.

*As added by P.L.1-2005, SEC.49.*

## **IC 36-12-10-10**

### **Title to real property; sale; procedure**

Sec. 10. (a) The lessor corporation shall hold in fee simple the real property on which the library building or buildings exists or will be constructed. A public corporation or corporations proposing to lease the library building or buildings, either alone or jointly with another public corporation that owns the property, may sell the property to the lessor corporation in fee simple.

(b) Before a sale under this section may take place, the governing authority of the public corporation shall file a petition with the

circuit court of the county in which the public corporation is located requesting the appointment of three (3) disinterested freeholders of the public corporation as appraisers to determine the fair market value of the real property. Upon their appointment, the three (3) appraisers shall fix the fair market value of the real property and report this amount to the circuit court not later than two (2) weeks from the date of their appointment. The public corporation may then sell the real property to the lessor corporation for an amount not less than the amount fixed as the fair market value by the appraisers. The amount shall be paid in cash upon delivery of the deed by the public corporation to the lessor corporation.

*As added by P.L.1-2005, SEC.49.*

### **IC 36-12-10-11**

#### **Authority of lessor corporation to issue stocks, bonds, and other securities; sale procedure**

Sec. 11. (a) A corporation qualifying as a lessor corporation under this chapter may, in furtherance of the corporation's purposes, issue and sell bonds and other securities. Mortgage bonds issued by a lessor corporation that are a first lien on the leased property are legal and proper investments for state banks and trust companies, insurance companies, and fiduciaries. The bonds may be callable, with or without premiums, with accrued and unpaid interest upon notice provided in the mortgage indenture.

(b) All bonds and other securities issued by the lessor corporation must be advertised and sold in accordance with IC 5-1-11 at any interest rate.

(c) The approval of the securities division of the secretary of state is not required in connection with the issuance and sale of bonds or other securities of a public corporation.

*As added by P.L.1-2005, SEC.49.*

### **IC 36-12-10-12**

#### **General obligation bonds**

Sec. 12. A public corporation may issue the corporation's general obligation bonds to procure funds to pay the cost of acquisition of real property. The bonds must be authorized, issued, and sold in accordance with IC 6-1.1-20.

*As added by P.L.1-2005, SEC.49.*

### **IC 36-12-10-13**

#### **Tax levy to pay lease rentals**

Sec. 13. A public corporation that executes a lease under this chapter shall annually levy a special tax, in addition to other taxes authorized by law, sufficient to produce each year the necessary funds with which to pay the lease rental stipulated to be paid by the public corporation under the lease. A levy under this section shall be reviewed in accordance with IC 6-1.1-17. The first tax levy shall be made at the first annual tax levy period following the date of the execution of the lease. The first annual levy must be sufficient to pay

the estimated amount of the first annual lease rental payment to be made under the lease.

*As added by P.L.1-2005, SEC.49.*

#### **IC 36-12-10-14**

##### **Tax exemptions**

Sec. 14. All property owned by a lessor corporation contracting with a public corporation or corporations under this chapter and all stock and other securities, including the interest or dividends issued by a lessor corporation, are exempt from all state, county, and other taxes, excluding the financial institutions tax and the inheritance taxes.

*As added by P.L.1-2005, SEC.49.*